SUPREME COURT OF THE UNITED STATES

October Term 1926

No. 122

SAMUEL A. MYERS and HARRY MYERS,
Co-partners as S. A. & H. Myers,
Petitioners,

vs.

INTERNATIONAL TRUST COMPANY,
Respondent.

BRIEF FOR PETITIONERS

EDWARD F. McCLENNEN,
For the Petitioners.

January 3, 1927.

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THE ERROR CLAIMED

The Supreme Judicial Court of Massachusetts, reversing the Superior Court, has decided, erroneously, that the offer in composition made by Samuel A. Myers and Harry Myers to pay **all** unsecured debts was not an offer to pay all unsecured debts but **only firm** debts so that the discharge consequent on confirmation did not bar the notes held by the International Trust Company — a scheduled creditor which received its dividend, because the notes signed by Samuel A. Myers and Harry Myers on their face in the name S. A. & H. Myers were also signed by them on the back with the names Samuel A. Myers and Harry Myers.

This failure of the State Court to accord to a discharge in bankruptcy its full efficacy, and to interpret, rightly, the offer in composition made in a Bankruptcy Court of the United States, deprives the petitioners of a federal right and

is ground for the exercise of the jurisdiction of the Supreme Court of the United States.

Myers v. *International Trust Co.*, 263 U. S. 64.

Friend v. *Talcott*, 218 U. S. 680; 228 U. S. 27.

STATEMENT OF FACTS

On February 10, 1917, "Samuel A. Myers" and "Harry Myers" filed in the Bankruptcy Court of The Massachusetts District under the caption "Samuel A. Myers and Harry Myers alleged bankrupts," an application for a meeting of "their creditors" to act upon an offer in composition "upon all unsecured debts" in satisfaction of "their debts" (R. 18). This was endorsed "In the matter of Samuel A. Myers and Harry Myers, alleged bankrupts."

On March 3, 1917, "Samuel A. Myers" and "Harry Myers" filed this offer in this court, namely, to pay "all unsecured creditors" (R. 19).

On March 23, 1917, "Samuel A. Myers" and "Harry Myers" filed a petition for the confirmation of this composition (R. 20). This was endorsed, "In the matter of Samuel Myers, Harry Myers, alleged bankrupts."

On May 28, 1917, the court, under the caption "Samuel A. Myers and Harry Myers, alleged bankrupts," entered an order confirming this composition (R. 22).

This is the discharge which the petitioners claim to be a bar in this suit.

The significance of these documents is enlightened by the procedural requirements in the court in which they were filed. The District Court of the United States for the District of Massachusetts "has consistently refused to make the adjudication of a partnership unless all the partners are adjudged bankrupt at the same time" (*In re Forbes*, 128 Fed. 137, 140; approved at 228 U. S. 701). "We do not perceive that the clause imports that the partnership could be in bankruptcy, and the partners not" (*Francis* v. *McNeal*, 228 U. S. 695, 701). "On the other hand it would

be an anomaly to allow proceedings in bankruptcy against joint debtors from some of whom, at any time before, pending, or after the proceeding, the debt could be collected in full" (same page). "Finally, it would be a third incongruity to grant a discharge in such a case from the debt considered as joint but to leave the same persons liable for it considered as several. We say the same persons, for however much the difference between firm and member under the statute be dwelt upon, the firm remains at common law a group of men and will be dealt with as such in the ordinary courts for use in which the discharge is granted" (same page). "The confirmation of a composition shall discharge the bankrupt from his debts other than those agreed to be paid by the terms of the composition and those not affected by the discharge" (Bankruptcy Act, Sec. 14(c); Compiled of 1916, Sec. 9598).

It was in the light of this procedural, administrative and substantive law that these documents got their significance.

Before they were filed, creditors had filed an involuntary petition in this Bankruptcy Court which alleged that "Samuel A. Myers and Harry Myers, both of Brookline in the County of Norfolk, co-partners trading as S. A. & H. Myers, have his principal place of business at Boston and owes debts to the amount of $1,000.00; that said Samuel A. and Harry Myers are insolvent. * * * Wherefore your petitioners pray that service of this petition with a subpoena may be made upon Samuel A. and Harry Myers * * * and that he may be adjudged by the court to be a bankrupt" (R. 29). No adjudication was ever made on this petition.

On the day of filing the application for a composition meeting February 10, 1917, Samuel A. Myers and Harry Myers filed on the standard form used in the Massachusetts District, a schedule of all their firm creditors and of all their individual creditors. This schedule set out that "Samuel A. Myers of Boston and Harry Myers of Brookline respectfully represent that they are in the clothing business * * *

have been partners under the firm name of S. A. & H. Myers, having their principal place of business at Boston." Schedule A purported to contain the debts of the partners, Schedule C purported to contain the debts of Samuel A. Myers. Schedule E purported to contain the debts of Harry Myers. Against Schedule C was written, "that he has no individual debts." Against Schedule E was written. "that he has no individual debts." On Schedule A appeared the name and address of the International Trust Company as a creditor on notes for $20,000.00 (R. 30).

At this time, the International Trust Company held notes amounting in the aggregate to $20,000.00. These were signed on the face, "S. A. & H. Myers," and on the back "S. A. & H. Myers, S. A. Myers, Harry Myers" (R. 16). International Trust Company opposed the confirmation of the composition. After it was confirmed, and this company had received its composition dividend, it sought, unsuccessfully, to avoid the discharge (*Myers* v. *International Trust Co.*, 263 U. S. 64). It then brought on for trial, the suit now at bar to recover against Samuel A. Myers and Harry Myers individually on the ground that their liability as signers on the back of the notes was not barred by the discharge. The suit failed in the Superior Court, and on appeal prevailed in the Supreme Judicial Court. Pursuant to the rescript of the Supreme Judicial Court, a final decree was entered in the Superior Court against the defendants. The defendants, petitioners, seek the reversal of this decree because the discharge was a bar.

ARGUMENT

Samuel A. Myers and Harry Myers, in filing their composition offer, clearly manifested their intention to offer to pay a composition dividend to all the creditors whom they had, in whatever way the liabilities arose, and to have a discharge from all those liabilities. They included the International Trust Company in the offer. It is not to be supposed that they intended to get a futile discharge from

this creditor. On the confirmation of the composition the assets which they were releasing by the composition would be immediately reachable by the International Trust Company if Samuel A. Myers and Harry Myers were not discharged in all respects from this claim. No one reading their application for composition would suppose that they were manifesting an intention to make an offer which would leave such a result. If the matter had proceeded to adjudication in bankruptcy, and administration without composition, the International Trust Company would have received no more, ratably, than any other creditor because the debtors had no assets except the firm assets.

The creditors' petition for adjudication, as required by the rules of the Massachusetts District, petitioned as to each partner, "that he may be adjudged by the court to be a bankrupt." The District Court would not have adjudicated the partnership bankrupt, unless adjudicating the two partners, individually (*In re Forbes*, supra). Faced with this prospect of individual bankruptcy, the Bankruptcy Act gave each of them a right to offer a composition before adjudication (Bankruptcy Act, Sec. 12, as amended June 25, 1910, Ch. 412, Sec. 5; Compiled of 1916, Sec. 9596). They showed, clearly, an intention to get as much of a discharge by composition as they could get in the course of ordinary bankruptcy administration.

"The confirmation of a composition shall discharge the bankrupt from his debts other than those agreed to be paid by the terms of the composition and those not affected by a discharge" (Bankruptcy Act, Sec. 14(c); Compiled 1916, Sec. 9598).

This discharge covered "all unsecured creditors" of the persons offering the composition, both with respect to the joint and with respect to the several liability (*Francis* v. *McNeal*, 228 U. S. 695, 701; *Abbott* v. *Anderson*, 265 Ill. 285 — 106 N. E. 782; *Bear* v. *Liberty National Bank*, (C. C. A. 4th) 285 Fed. 703, 705 — reversed on other grounds at 265 U. S. 365).

In *Bear* v. *Liberty National Bank*, the creditor, claiming a lien, held a judgment on notes made by a partnership and **endorsed by the individual partners.** The court in holding that an adjudication of bankruptcy against the partnership was of necessity an adjudication against the individuals, said (705):—"It cannot be that the bankruptcy of the partnership carries the partners into the proceeding with their assets and liabilities for the purpose of proving debts, adjusting equities, preventing preferences generally, and distributing to creditors the individual as well as partnership assets, and yet does not carry them in for the two other main purposes of the bankruptcy statute, namely, protecting creditors against the preference of liens acquired within four months of bankruptcy, and **discharging the debtor from his debts**" (Type not heavy in original). "The effect of the composition proceeding is to substitute composition for bankruptcy proceedings in a certain sense, and in a measure to supersede the latter proceeding, and to reinvest the bankrupt with all his property free from the claims of his creditors" (*Cumberland Glass Co.* v. *DeWitt*, 237 U. S. 447, 454).

Manifestly, the composition discharge sought by the petitioners was to be co-extensive with this discharge which they would receive in the ordinary course of bankruptcy. They had filed schedules of their debts and assets — both firm and individual — as required by the rules of the District. It is contended for the International Trust Company that the debtors filed no individual schedules. It is submitted that this is not so. A schedule does not cease to be a schedule of individual debts or of individual assets merely because the bankrupt says that he has none such. By this statement they were on their oath in the Bankruptcy Court that they had no creditors — whether firm or individual — other than those that appeared on the sheets filed, and no assets — whether firm or individual — other than those that appeared on the sheets filed. If these statements were erroneous, the alleged bankrupts were

open to prosecution, not because they had filed no schedules but because they had filed false schedules. If they had filed no schedules of individual debts or of individual assets they would not be open to prosecution for filing false ones. Therefore, they had filed schedules of all their debts and assets — both firm and individual. In their composition offer they say without any limitation or exception "that they have filed a schedule of their property and a list of creditors to be filed by the bankrupts." In the court in which this statement was made, because of the requirement of its rules, this meant a schedule of their individual and firm assets and liabilities. They set out that they owe the International Trust Company $20,000.00 on notes. This was the whole truth. The debt in all ways was incurred exclusively in the firm business. It was of no substantial consequence that these same men — the only debtors — had signed in more than one way. It was only if there had been individual assets that it would have been of importance. As partners, they were jointly and severally liable for the $20,000.00. They were not any more severally liable because their names were on the back. They owed these notes for different reasons, but they did not owe them twice over.

Under these circumstances their composition offer meant no less than it said on its face (R. 18). It was not a composition offer by the firm of S. A. & H. Myers. It was not an offer by Samuel A. Myers and Harry Myers to pay only their firm debts. It said nothing about the firm. It was entitled with their individual names. It was to pay "their" debts, and not merely their firm debts. It was to pay "all" debts, and not merely firm debts. It was to pay "all" claims (R. 19), and not merely claims against the firm. There is no restriction in the text. There is no restriction to be inferred from the object which the offerors manifested an intention to accomplish. When Samuel A. Myers and Harry Myers, in their individual names, offered to pay the International Trust Company the stated dividend in

composition on the scheduled notes, they were to get, in return, a discharge of Samuel A. Myers and Harry Myers from all liability to the International Trust Company.

The decree should be reversed, and a decree entered for the defendant-petitioners.

Respectfully submitted,

EDWARD F. McCLENNEN,

For the Petitioners.

January 3, 1927.

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